

LEGAL UPDATE



S.C. Department of Probation, Parole and Pardon Services

September 26, 2018

Public Defender's Conference, Myrtle Beach, SC

Statistics (as of June 30, 2018)

Active Offender Population	
Probation	24,904 (85%)
Parole	2,637 (9%)
Community Supervision and Supervised Furlough-2A	1,090 (4%)
Supervised Reentry	350 (1%)
Not Guilty by Reason of Insanity	135 (<1%)
Youthful Offender Release	34 (<1%)
Department of Juvenile Justice	21 (<1%)
Total Active Population	29,171

Statistics (as of June 30, 2018)

Daily Supervision Cost FY 2017	
Standard Supervision	\$3.77
Medium Supervision	\$4.50
High Supervision	\$4.67
Intensive Supervision	\$6.11
Intensive Supervision w/ GPS	\$13.32
Sex Offender Supervision	\$15.54
Sex Offender Supervision w/ GPS	\$19.08
Offenders on Track	\$14.48

Statistics (continued)

- It costs approximately \$57.33 per day to house an inmate in the S.C. Department of Corrections.

Source: SCDC Website

<http://www.doc.sc.gov/research/BudgetAndExpenditures/PerInmateCost1988-2017.pdf>

Statistics (as of June 30, 2018)

Offender Characteristics	
Non-Violent	89%
Violent	11%
Age 25 & over	88%
Age 24 & under	12%
Male	78%
Female	22%
Race/Black	49%
Race/White	49%
Race/Other	2%
Registered Sex Offenders (1,020)	3%

Statistics (as of June 30, 2018)

Closure Rates		
Calendar Year 2018		
Probation/Successful	81%	
Parole/Successful	83%	
Other/Successful	95%	
Probation/ Unsuccessful	19%	
	Technical 85%	New Charges 15%
Parole/ Unsuccessful	17%	
	Technical 79%	New Charges 21%
Other/ Unsuccessful	5%	
	Technical 96%	New Charges 4%

LEGAL UPDATE

- State v. David Wilkins Ross, Opinion No. 27815 (S.C. 2018)(Filed June 13, 2018)
- First major Jessie's Law case since 2014.
- Deals with individuals placed on tracking for Failure to Register as a Sex Offender.

Jessie's Law Overview

S.C. Code 23-3-540

- Certain offenders convicted of child sex offenses must be monitored by PPP with GPS device.
 - Mandatory for CSC with a minor 1st and 3rd degree.
 - Discretionary for offenses listed in 23-3-540(G).
- Effective July 1, 2006.
- Must be monitored for as long as the individual remains on the sex offender registry.
 - May petition Court for removal after 10 years.
 - This applies to all offenses (State v. Dykes).

State v. Ross, Cont.

- Three ways to be monitored:
 - Commit the offense AFTER July 1, 2006.
 - S.C. Code 23-3-540(A) and (B).
 - Commit the offense BEFORE July 1, 2006, but violate supervision AFTER July 1, 2006.
 - S.C. Code 23-3-540(C) and (D), plus Dykes.
 - Commit the offense BEFORE July 1, 2006, but violate the sex offender registry AFTER July 1, 2006.
 - S.C. Code 23-3-540(E) and (F).

State v. Ross, Cont.

- State v. Ross deals with individuals required to be monitored who violated the registry.
 - David Ross committed a Lewd Act in 1979, and failed to register as a sex offender in 2011.
- Grady v. North Carolina
 - U.S. Supreme Court ruled that GPS tracking is a search under the Fourth Amendment.
 - It did NOT hold that GPS tracking is unreasonable.
- S.C. Supreme Court held that for 23-3-540(E), the court must make a reasonableness finding.

State v. Ross, Cont.

- PPP has identified 80 individuals currently being tracked for convictions for Failure to Register.
- These individuals have been notified of their rights for a hearing to determine if it is reasonable to continue to track them.
- Office of Indigent Defense has agreed to represent these individuals if they qualify for a public defender.

Community Supervision

- Recurring problem: Judges revoking the remainder (less than one year) of CSP, but pre-hearing detention time is applied, resulting in the inmate being released still with CSP time.
- Example: Offender in court has 200 days left on CSP. He has 100 days of pre-hearing credit (he was arrested when he had 300 days left). Judge revokes 200 days. The inmate is released from SCDC after 100 days, so he has 100 days left to do on CSP.

Community Supervision

- SOLUTION:
- Wording added to CSP revocation form:
“Jail time is already factored into the CSP end date. No jail time credit against active sentence.”
- This wording signals to SCDC to not apply pre-hearing detention credit.
- This only applies when there's 365 days or less remaining on CSP!

Violations Step-by-Step

● Process

1. Violation
2. Staffing
3. Process issued
4. Process served
5. Bond hearing
6. Preliminary hearing – no right if the violations are convictions for another offense
7. Final hearing

Violations – Compliance

- Violations that require measured responses.
 - These violations are addressed through the use of counseling, public service employment, verbal reprimands, revising the supervision plans, and inpatient or outpatient treatment.
 - Responses are related to the type of violation. I.E., drug treatment for failed drug tests, or referrals to vocational rehabilitation for prolonged unemployment.
 - Repeated violations will see graduated sanctions.
 - If offenders fail to respond to the graduated sanctions, the agents will bring the case back to General Sessions.

Violations – Community Safety

- Serious violations that require an immediate response.
 - These include weapons violations, contact with victims, new criminal offenses, and other signs the offender is a danger.
- Agents may issue a warrant for the arrest of the offender and take the case back to court.
- Bond cannot be denied for probation warrants.
- The sentencing court and the court where the violation occurred both have jurisdiction to hear the case.

Violations

	PROBATION	COMMUNITY SUPERVISION	PAROLE	YOA
BOND	<u>MAGISTRATE</u>	<u>MAGISTRATE</u>	<u>GENERAL SESSIONS</u>	<u>GENERAL SESSIONS</u>
FINAL HEARING	GENERAL SESSIONS	GENERAL SESSIONS	PAROLE BOARD	ADMIN. HEARING OFFICER
APPOINTED ATTORNEY	RIGHT	RIGHT	EXTRAORDINARY CIRCUMSTANCES	NONE

Violations

	SUPERVISED FURLOUGH	JUVENILE PAROLE BOARD RELEASE	NGRI
BOND	<u>MAGISTRATE</u>	<u>NO BOND</u>	<u>NO BOND</u>
FINAL HEARING	ADMIN. HEARING OFFICER	SC BOARD OF JUVENILE PAROLE	GENERAL SESSIONS
APPOINTED ATTORNEY	NONE	NONE	RIGHT – ATTORNEY FROM ORIGINAL TRIAL UNLESS RELIEVED BY COURT

Administrative Hearings

- Held before a hearing officer of the Department.
- May be waived by the offender.
- Counsel may be present.
- The hearing officer may resolve the violation by imposing sanctions.
- New conditions are submitted to the court through a consent order.
- If a revocation is recommended, the hearing officer refers the case to GS court.

Violation Hearings

What is the Court allowed to do?



Violation Hearings – Probation

- The Court may:

- Revoke up to the full amount of the suspended sentence,
- Revoke a partial amount and continue the offender on supervision,
- Extend probation up to the full five years,
- Add or modify conditions,
- Revoke a partial amount and terminate supervision, or
- Terminate supervision with no revocation.

Violation Hearings – CSP

- The Court must:
 - Determine if the conditions are reasonable,
 - Determine if there's been a violation of the conditions.
- Then the Court may:
 - Revoke up to one year;
 - Continue the offender on CSP with the same conditions; or
 - Continue the offender with modified conditions.
- The Court may not terminate CSP!

Questions??



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